

### **REMARKS**

This responds to the Final Office Action mailed on October 21, 2008.

Claims 27, 35, 38 and 46 are amended, claims 1-26, 30, 36-37, 41 and 47-48 have been previously canceled, and claims 57-68 are new; as a result, claims 27-29, 31-35, 38-40, 42-46 and claims 49-68 are now pending in this application. No new matter is added with these amendments.

#### **§103 Rejection of the Claims**

Claims 27-29, 31-35, 38-40 and 42-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlin et al. (U.S. 6,119,152; hereinafter Carlin) and “Domain Names – Concepts and Facilities” (hereinafter RFC 1034) ) and Lowery et al. (U.S. Patent No. 5,894,554, hereinafter “Lowery”).

Applicant respectfully submits that the rejection of the aforementioned claims under 35 U.S.C. § 103 is defective for the reason that prior art references when combined do not teach or suggest all of the claim limitations of the independent claims of the present application.

#### **Applicable Law**

In rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. See M.P.E.P. §2142. In the recent decision of the Supreme Court on *KSR Int’l Co. v. Teleflex Inc.*<sup>1</sup>, the analysis of obviousness previously set forth in *Graham v. John Deere Co. of Kansas City*<sup>2</sup>, was reaffirmed. The Court in *Graham* set out an objective analysis for applying §103 as follows:

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.”<sup>3</sup>

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<sup>1</sup> 127 S.Ct. 1727, 82 USPQ.2d 1385 (2007).

<sup>2</sup> 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966).

<sup>3</sup> The Court in *KSR v. Teleflex*, at page 1730, quoted the analysis of *Graham* from page 18.

When claim elements are found in more than one prior art reference, the fact finder must determine “whether a person of ordinary skill in the art, possessed with the understandings and knowledge reflected in the prior art, and motivated by the general problem facing the inventor, would have been led to make the combination recited in the claims.” *In re Kahn*<sup>4</sup>. In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co. of Kansas City*<sup>5</sup>. Further, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*<sup>6</sup>. “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*<sup>7</sup>. Office personnel must rely on the applicant’s disclosure to properly determine the meaning of the claims. *Markman v. Westview Instruments*<sup>8</sup>.

Applicant believes that the issue of patentability over Carlin in combination with RFC 1034 and Lowery is best understood with regard to claim 27.

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<sup>4</sup> 441 F.3d 977, 988, 78 USPQ2d 1329, 1337 (Fed. Cir. 2006).

<sup>5</sup> 383 U.S. 1 at 467.

<sup>6</sup> 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

<sup>7</sup> 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

<sup>8</sup> 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (*en banc*), *aff’d*, U.S., 116 S. Ct. 1384 (1996).

27. A sales system for coupling to a communications network, comprising:
- a first sales interface at a first network address, the first sales interface including a first set of user interface elements;
  - a second sales interface at a second network address, the second sales interface including a second set of user interface elements;
  - a sales server at a third network address *that operates the first and second sales interfaces while providing an impression that they are being operated by different entities, the sales server includes a customization interface responsive to user input to define the first and second sets of user interface elements*, the sales server is operative to create the impression that the sales interfaces are being operated by different domains by operating with the address of the first sales interface mapped to a first domain and the address of the second sales interface mapped to a second domain different from the first domain, *and the first sales interface includes links to a first set of pages not operated by the sales server but being mapped to the first domain, and the second sales interface includes links to a second set of pages not operated by the sales server but being mapped to the second domain*;
  - a first member server at a fourth network address to operate the first set of pages;
  - a second member server at a fifth network address to operate the second set of pages; and
  - a central database system adapted to receive listings of items for sale, the listings received from the sales server, the central database to store the listings, wherein the listings are offered on the first sales interface or the second sales interface.*

Specifically missing from the cited references are at least those limitations of claim 27 indicated by italics hereinabove. First, the system of claim 27 includes a central database for storing *listings of items for sale, wherein the listings are offered on the first sales interface or the second sales interface*. In the system of Carlin, the service provider interfaces are isolated, and “the data related to these services is kept separate so that subscribers of one service cannot access data from another service.”<sup>9</sup> Therefore, Carlin fails to satisfy this limitation of the claims.

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<sup>9</sup> Carlin, col. 5, ll. 1-15.

Second, while the Final Office Action of Oct. 21, 2008 identifies sections of Carlin as related to a “multi-provider on-line service,” Carlin does not teach a sales server that *operates the first and second sales interfaces* as recited in Applicant’s claims. The host 12 of Carlin does not operate provider interfaces as indicated in the Final Office Action, but rather the provider 16 “can customize the multi-provider on-line system to offer the desired features.”<sup>10</sup> Each service provider operates their own interface but may use some of the features available from the host. While the host 12 is able to provide basic information, such as menu information, when a user selection is made, the service provider uploads information to the host 12 for communication with the subscriber.

Further “each provider can generate an on-line service” and offer services and features of the host 12.<sup>11</sup> The providers 16 generate and control their own user interfaces, and only interface with the host 12 to access services offered by host 12. In this way, Carlin clearly teaches away from Applicant’s claim, as it is the providers 16 which use the interfaces of host 12.

Third, assuming arguendo the reasoning presented in the Final Office Action, such characterization that host 12 *operates* such interfaces for providers 16 as recited in Applicant’s claim 27 is not a consistent argument. By the Final Office Action reasoning, Carlin cannot satisfy the above limitations to *operate the first and second sales interfaces* while satisfying the latter limitations of *the first sales interface includes links to a first set of pages not operated by the sales server ....and the second sales interface includes links to a second set of pages not operated by the sales server*. In the Carlin system, all communication is through the host 12, and there is NO access to interfaces or pages that is not through the host 12. Therefore if the Final Office Action characterizes “communicates” as *operates* then Carlin does not teach the above recited latter limitation, and therefore, cannot satisfy both elements of claim 27.

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<sup>10</sup> *Ibid.*, col. 2, ll. 22-24.

<sup>11</sup> *Ibid.* col. 2, ll. 28-38.

While the RFC 1034 teaches relationships of domains, there is no teaching that provides the above-detailed deficiencies of Carlin. Further, Lowery teaches a page server where requests are sent to an available page server and processed. Lowery not only fails to satisfy the above-detailed deficiencies of Carlin, but also fails to satisfy the claim limitations identified in the Final Office Action of *a first member server at a fourth network address to operate the first set of pages; and a second member server at a fifth network address to operate the second set of pages*. Specifically, the page servers of Lowery are not to *operate the first set of pages*, as they merely retrieve data.<sup>12</sup> Applicant notes the Final Office Action's inconsistency in the characterization of the verb *operate* as used with respect to different limitations of claim 27. Still further, the page servers of Lowery do not operate on specific pages, but rather are provided as a group of servers and used as available. The "page server 404 (1) receives the dispatched request, it processes the request and retrieves the data from an appropriate data source."<sup>13</sup> Carlin in combination with RFC 1034 and / or Lowery therefore fails to teach or suggest all of the limitations of claim 27.

The above remarks are also applicable to a consideration of independent claims 35, 38 and 46.

In addition, if an independent claim is nonobvious under 35 U.S.C. § 103 then, any claim depending therefrom is nonobvious and rejection of claims 28, 29, 31-34, 39-40, and 42-45 under 35 U.S.C. § 103 is also addressed by the above remarks.

In summary Carlin, whether considered separately or in combination with either RFC 1040 and/or Lowery, fails to teach or suggest each and every limitation of independent claims 27, 35, 38 and 46 to support a *prima facie* case of obviousness. Applicant respectfully submits the amended claims are patentable over the cited references.

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<sup>12</sup> Lowery, col. 5, ll. 45-47.

<sup>13</sup> *Ibid.* col. 5, ll. 39-41.

**Reservation of Rights**

In the interest of clarity and brevity, Applicants may not have equally addressed every assertion made in the Final Office Action, however, this does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 408-278-4046 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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**CERTIFICATE UNDER 37 C.F.R. 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 21 day of January, 2009.

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